

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:21-HC-2164-M

UNITED STATES OF AMERICA)	
)	
Petitioner,)	PROPOSED JOINT
)	PRE-TRIAL ORDER
v.)	PURSUANT TO L.R. 16.1(c)
)	E.D.N.C.
JAMES KOZOHORSKY,)	
)	
Respondent.)	

I. STIPULATIONS:

A. Legal Stipulations

1. All parties are properly before the Court.
2. The Court has jurisdiction of the parties and the subject matter.
3. All parties have been correctly designated.
4. There is no question as to misjoinder or non-joinder of the parties.
5. This action arises under the Adam Walsh Act, Title 18, United States Code, Section 4248 and this Court has original exclusive jurisdiction.
6. Venue of this matter is proper.
7. Copies of all official documents, documents kept in the ordinary course of business, and all production exchanged during discovery in this matter are genuine and authentic.

B. Factual Stipulations

1. On July 28, 2021, Respondent James Kozohorsky (“Respondent”) was certified as a sexually dangerous person pursuant to 18 U.S.C. § 4248. [D.E. 1].
2. At the time of his certification, Respondent was serving a 120-month sentence for Failure to Register as a Sex Offender in violation of 18 U.S.C. § 2250A imposed by the United States District Court for the Eastern District of Missouri in case number 1:11-CR-17.
3. Respondent has engaged in or attempted to engage in sexually violent conduct by virtue of his 1987 and 1989 convictions for Rape, thereby meeting Prong 1 of the Adam Walsh analysis.

II. CONTENTIONS:

A. PETITIONER

1. Facts:

- (a) As a result of a serious mental illness, abnormality, or disorder, Respondent would have serious difficulty refraining from sexually violent conduct or child molestation if released.

2. Issues:

- (a) Whether Respondent is a sexually dangerous person in that he has previously engaged in or attempted to engage in sexually violent conduct or child molestation, and whether he suffers from a serious mental illness, abnormality or disorder, as a result of which he would have serious difficulty in refraining from

sexually violent conduct or child molestation if released.

B. RESPONDENT

1. Factual/Legal Contentions:

- (a) Respondent is not a sexually dangerous person in that he does not suffer from a serious mental illness, abnormality, or disorder that would cause him serious difficulty in refraining from sexually violent conduct or child molestation if released.
- (b) Respondent is not a sexually dangerous person in that he would not have serious difficulty refraining from sexually violent conduct or child molestation if released.

2. Issues:

- (a) Whether Respondent suffers from a serious mental illness, abnormality or disorder that would cause him serious difficulty in refraining from sexually violent conduct or child molestation if released;
- (b) Whether, as a result of any serious mental illness, abnormality, or disorder, he would have serious difficulty in refraining from sexually violent conduct or child molestation if released.

III. EXHIBITS

A. PETITIONER:

N o.	Description	Docket Entry or Bates Stamp#	Objections
1	Certification of a Sexually Dangerous Person, filed July 28, 2021	D.E. 1-1	
2	Forensic Precertification Evaluation Report filed August 3, 2021, by Dr. Dawn Graney	D.E. 7-1	
3	Curriculum Vitae of Dr. Dawn Graney	D.E. 61-1	
4	Forensic Evaluation Report filed September 21, 2021, by Dr. Mark E. Hastings	D.E. 21-1	
5	Curriculum Vitae of Dr. Mark E. Hastings	D.E. 21-3	
6	Judgment in a Criminal Case, <i>United States v. James D. Kozohorsky</i> , No. 1:11CR00017SLJ (E.D. Mo. Apr. 23, 2012)	BOP_KOZO 3-9	
7	Presentence Investigation Report, <i>United States v. James D. Kozohorsky</i> , No. 1:11CR00017SNLJ (E.D. Mo. Apr. 19, 2012)	BOP_KOZO 1527-1545	
8	Judgment <i>State of Missouri v. James Daniel Kozohorsky</i> Butler County, No. 09BT-CR00548-01 (Jan. 11, 2011)	BOP_KOZO 1298-1299	
9	Judgment and Commitment Order - Revocation, <i>State of Arkansas v. James Daniel Kozohorsky</i> , Poinsett County, No. CR 2006-101 (Nov. 1, 2010)	BOP_KOZO 182-185	
10	Butler County Sheriff's Office Offense/Incident Report (Aug. 25, 2010)	BOP_KOZO_AEO 2399-2406	Objection Pursuant to F.R.C.P. 37(c); F.R.E. 802
11	Judgment and Disposition Order, <i>State of Arkansas v. James Daniel Kozohorsky</i> , Poinsett County, No. CR. 2006-101 Mar. 13, 2007)	BOP_KOZO 1125-1127	

12	Poinsett County Sheriff's Department Documentation regarding Case No. CR 2006-101	BOP_KOZO_AEO 2130–2131 2135–2139, 2163–2164, 2177–2178	Objection Pursuant to F.R.C.P. 37(c); F.R.E. 802
13	Judgment and Commitment Order <i>State of Arkansas v. James Daniel Kozohorsky</i> Mississippi County, No. CR-90-34 (June 10, 1991)	BOP_KOZO 1135–1137	
14	Incident/Offense Report (Nov. 15, 1989)	BOP_KOZO_AEO 1519	
15	Judgment and Commitment Order <i>State of Arkansas v. James Daniel Kozohorsky</i> Mississippi County, No. CR-87-11 (Mar. 7, 1988)	BOP_KOZO 1141–1142	
16	Incident/Offense Report (Jan. 15, 1987) Incident/Offense Report Supplement (Jan. 22, 1987) Synopsis of Report Additional incident/Offense Report Narrative	BOP_KOZO_AEO 2252–2255, 2258, 2302–2306	Objection Pursuant to F.R.C.P. 37(c); F.R.E. 802
17	Statement from S.L. (Jan. 21, 1987)	BOP_KOZO_AEO 2300-2301	Objection Pursuant to F.R.C.P. 37(c); F.R.E. 802
18	Incident/Offense Report Supplement (Jan. 12, 1987)	BOP_KOZO_AEO 1521-1522	
19	Inmate Names	BOP_KOZO 1399	
20	ADC Risk Assessment and Offender Profile Report	BOP_KOZO_AEO 2182	Objection Pursuant to F.R.C.P. 37(c); F.R.E. 802
21	Memoranda re Risk Relevant Material in BOP Custody	BOP_KOZO 1074, 1076, 1224	
22	Risk Relevant Material in State Custody	BOP_KOZO_AEO 2185–2196	Objection Pursuant to F.R.C.P. 37(c); F.R.E. 802

23	BOP PDS Records pertaining to James Kozohorsky	BOP_KOZO 1000, 1041, 1920–1923, 1925–1934 1939, 1941–1943, 1945–1953, 1956–1960, 1963–1965, 2031–2035	
24	Readiness Statement Authored by James Kozohorsky	BOP_KOZO 1970–1971	

Petitioner reserves the right to designate and use any exhibits identified by Respondent in this action.

B. RESPONDENT

N o.	Description	Docket Entry or Bates Stamp#	Objections
1	Forensic Report by Dr. Joseph Julian Plaud filed September 27, 2021	D.E. 24	
2	Curriculum Vitae of Dr. Joseph Julian Plaud	D.E. 24-2	
3	Forensic Report by Dr. Leonard Bard filed January 10, 2022	D.E. 37	
4	Curriculum Vitae of Dr. Leonard Bard	D.E. 37-1	

Respondent reserves the right to designate and use any exhibits identified by Petitioner in this action.

IV. DESIGNATION OF PLEADINGS AND DISCOVERY MATERIALS

A. PETITIONER

Petitioner designates the entire pleadings, responses, transcript of any depositions, and any discovery material exchanged between the parties for purposes of cross-examination. Petitioner reserves the right to use, as necessary, all portions of these documents, as appropriate, pursuant to the Federal Rules of Evidence and the Local Rules.

B. RESPONDENT

Respondent designates the entire pleadings, responses, transcript of any depositions, and any discovery material exchanged between the parties for purposes of cross-examination. Respondent reserves the right to use, all portions of these documents, as appropriate, pursuant to the Federal Rules of Evidence and the Local Rules.

V. WITNESSES

A. PETITIONER

Name	Address	Proposed Testimony
Dr. Dawn Graney	104 South White Street #1003 Wake Forest, NC 27587	Expert Testimony regarding whether Respondent is a Sexually Dangerous Person, to include testimony that Respondent engaged in or attempted to engage in sexually violent conduct; Respondent suffers from a serious mental illness, abnormality or disorder; and Respondent would have serious difficulty refraining from sexually violent conduct if released.

Dr. Mark E. Hastings	P.O. Box 1731 Leesburg, VA 20177	Expert Testimony regarding whether Respondent is a Sexually Dangerous Person, to include information that Respondent engaged in or attempted to engage in sexually violent conduct; testimony that Respondent suffers from a serious mental illness, abnormality or disorder; and testimony that Respondent would have serious difficulty refraining from sexually violent conduct if released.
James Kozohorsky	FCI Butner	Testimony regarding his criminal history and testimony regarding his sexual dangerousness.

Petitioner reserves the right to call any witness listed by Respondent in this Pretrial Order. Petitioner reserves the right to call rebuttal witnesses, as appropriate.

B. Respondent

Name	Address	Proposed Testimony
Dr. Joseph Julian Plaud	8805 Tamiami Trail, North Number 243 Naples, FL 34108	Expert testimony consistent with his report that Respondent does not suffer from a serious mental illness, abnormality or disorder; and that Respondent would not have serious difficulty refraining from sexually violent conduct if released.

Dr. Leonard Bard	13 Highland Circle, Suite D-1 Needham, MA 02494	Expert testimony consistent with his report that Respondent does not suffer from a serious mental illness, abnormality or disorder; and that Respondent would not have serious difficulty refraining from sexually violent conduct if released.
James Kozohorsky	FCI Butner	Testimony regarding background, criminal history, release plans, volitional control, and lack of sexual dangerousness.

Respondent reserves the right to call any witness listed by Petitioner in this Pretrial Order. Respondent reserves the right to call rebuttal witnesses, as appropriate.

The parties reserve the ability to amend the Pretrial Order until March 20, 2023.

TRIAL TIME ESTIMATE: 2 days.

Respectfully submitted this 13th day of March 2023.

FOR PETITIONER:

MICHAEL F. EASLEY, JR.
United States Attorney

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LR 57.1 Counsel Appointed

APPROVED BY:

RICHARD E. MYERS II
CHIEF UNITED STATES DISTRICT JUDGE

_____, 2023

CERTIFICATE OF SERVICE

This is to certify that I have, this 13th day of March, 2023, served a copy of the foregoing upon Respondent's counsel of record by filing the same via the District Court's CM/ECF Document Filing System.

By: /s/ Holly P. Pratesi
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